

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SCOTT C. SMITH,

Plaintiff,

v.

KAREN BRUNSON, *et al.*,

Defendants.

Case No. C06-5712FDB

ORDER ADOPTING REPORT
AND RECOMMENDATION
AND DISMISSING COMPLAINT
WITHOUT PREJUDICE

The Magistrate Judge recommends that this cause of action be dismissed prior to service for failure to state a claim because Plaintiff alleges that the parole board considered improper information and that he is being improperly held, and if he were to prevail, the decision would call into question the propriety of his current incarceration. In such a case Plaintiff must proceed by writ of habeas corpus.

Plaintiff has filed objections asserting that he is not challenging the fact of his conviction or its validity, nor does he seek immediate release. Rather he is entitled to challenge the procedures of the Indeterminate Sentence Review Board and asserts that Defendants Garrett and other parole board officials imposed the life terms consecutively, rather than concurrently, for improper reasons.

The Court is not persuaded by Plaintiff's argument and will adopt the report and recommendation.

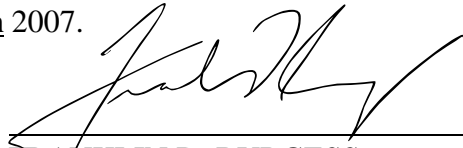
The Court, having reviewed the Report and Recommendation of Magistrate Judge J. Kelley Arnold, objections to the report and recommendation, and the remaining record, does hereby find and

ORDER:

- (1) The Court adopts the Report and Recommendation;

- 1 (2) Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE**. Plaintiff cannot challenge
2 the propriety of his current his incarceration in a civil rights action.
- 3 (3) The Clerk is directed to send copies of this Order to plaintiff and to the Hon. J. Kelley
4 Arnold.

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6 DATED this 6th day of March 2007.

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9 FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

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